

Remarks

Applicants respectfully request reconsideration of the above-identified application. Claims 1-60 remain in this application.

I. Double Patenting Rejection Based on Application No. 10/452,892

Claims 1-17, 36-38, 51-57, and 60 were provisionally rejected under obviousness-type double patenting as unpatentable over claims 1-2, 5, 13, 24, and 30-31 of U.S. Patent Application Serial No. 10/452,892 (corresponding to U.S. Patent Application Publication 2004/0241482). Applicants respectfully traverse this rejection.

The Office Action states that it would have been obvious to obtain the claimed invention “from the teachings” of the ‘892 application. (Office Action mailed Sept. 12, 2005 at §3, page 3.) However, rather than comparing the present claims to the *teachings* of the ‘892 application, a double patenting rejection requires comparing the present claims to the *claims* of the ‘892 application. See MPEP §804 II(B)(1)(stating that obviousness-type double patenting requires the *claimed* subject matter of the rejected application to be patentably indistinct from the *claimed* subject matter of the application or patent forming the basis for the rejection – the disclosure of the application or patent forming the basis for the rejection “may not be used as prior art”).

A *prima facie* case of obviousness has not been established to shift the burden of rebuttal to the Applicants because the applied *claims* of the ‘892 application fail to teach or suggest all of the claim recitations of the rejected claims. For example, the *claims* of the ‘892 patent application fail to teach or suggest “exposing the packaging film to an amount of radiation energy effective to increase” either the oxygen transmission rate of the packaging film or the water vapor transmission rate, as recited in independent claims 1 and 60, respectively. Further, the *claims* of the ‘892 patent application fail to teach or suggest a packaging film comprising at least one layer comprising oxygen barrier polymer and single-walled nanotube material, as recited in independent claim 45 (from which the rejected dependent claims 51-53 depend). Also, the *claims* of the ‘892 patent application fail to teach or suggest “one or more discontinuous regions” comprising single-walled carbon nanotube material as recited in independent claim 54.

The dependent claims 2-17, 36-38, 51-53, and 55-57 include additional recitations to those of the independent claims from which they depend, and therefore are further patentable over the claims of the '892 patent application.

II. Double Patenting Rejection Based on Application No. 10/749,451

Claims 1- 60 were provisionally rejected under obviousness-type double patenting as unpatentable over claims 1, 8-16, 20-39, and 44-57 of pending U.S. Patent Application Serial No. 10/749,451 (corresponding to U.S. Patent Application Publication 2005/0142313).

To overcome this rejection, Applicants submit the enclosed terminal disclaimer.

III. Rejection Based on the '892 Application

Claims 1-17, 36-38, 51-57, and 60 were rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent Application Publication 2004/0241482 filed June 2, 2003. In response, Applicants submit the enclosed Rule 1.132 Declaration of Grah and Havens to establish that the inventors of the present application -- Grah and Havens -- conceived the subject matter of the '482 publication that is relied upon in the §102(e) rejection. Namely, Grah and Havens contributed the idea of the subsequent irradiation of one or more film layers comprising single wall carbon nanotubes. (See '482 publication ¶¶ 0014-0017, 0029, 0041-0052, and 0138.)

Accordingly, the relevant subject matter asserted to be disclosed in the '482 publication, but which is not claimed in the '482 publication, was derived from the work of the inventors of the present application and is thus not the invention "by another" as required by §102(e).

IV. Conclusion

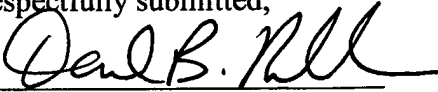
In view of the these remarks, the enclosed terminal disclaimer, and the enclosed Declaration of Grah and Havens, it is respectfully submitted that the present application is in condition for allowance. A notice to that effect is earnestly and respectfully requested.

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